



NIGERIAN ELECTRICITY REGULATORY COMMISSION

ENFORCEMENT REGULATION: REGULATORY INSTRUMENT OF THE ELECTRICITY SECTOR IN NIGERIA

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Outline

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2. NERC Electricity Industry (Enforcement) Regulations 2014
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WHAT IS LAW ENFORCEMENT?

The Black's Law Dictionary, 9th Edition defined Law Enforcement as:

“The detection and punishment of violations of the law.”

- Enforcement of regulations is one of the tools in modern societies for inducing conduct.
- Appropriate and effective enforcement occurs when regulatory proceedings are conducted in a consistent and timely manner.



NERC ELECTRICITY INDUSTRY (ENFORCEMENT) REGULATIONS 2014

- S. 96 of the EPSR Act 2005 empowers the Commission to make regulations which are necessary or convenient to be prescribed for carrying out or giving effect to Act.
- The success of any regulatory body to a large extent is predicated on its ability to enhance the growth of the sector by inducing entities to comply with laid down rules developed through a participatory consultation process.
- The antecedents of the sector necessitated the establishment of an enforcement regulatory tool.
- Consequently, the Commission approved the Electricity Industry (Enforcement) Regulations 2014 on 2nd May, 2014.

Objectives

- To create and promote efficient industry and market and foster a culture of regulatory compliance
- Facilitate swift investigation and resolution of incidences of regulatory non-compliance through a fair transparent process.
- An effective and stable system of assessment of compliance in the Nigerian electricity industry and proper allocation of responsibility
- The establishment for the deterrence, penalisation and application of sanctions to acts or omission of non-compliance

GENERAL PROVISIONS

- These includes:
 - a. **Citation and commencement** – “Electricity Industry (Enforcement) Regulations 2014 and came into force on 2nd May, 2014”
 - b. **Definition and Interpretations** – of words and clauses used in the Regulation.
 - c. **Application of the Regulations** – applies to all persons subject to the EPSR Act.
 - d. **Objectives and Principles of the Regulations** – to ensure the achievement of the goals and objectives set out in S. 32 of the EPSR Act 2005.

ENFORCEMENT PROCESS

- **Initiation of the Enforcement Process** – S. 32 of the EPSR Act provides the Commission shall exercise its enforcement powers on its own initiative or in response to a complaint –fair and balanced regulation
- **Conduct of Investigation** – Commission may authorized any of its officials or appoint an inspector pursuant to S. 95 of the EPSR Act to conduct an investigation. At the conclusion of any investigation, a report shall submitted to the Commission.
- **Decisions and Orders of the Commission** – the Commission may take a decision based on the report or decide to hold a hearing in accordance with S. 47 of the Act. Where the Commission determines that a licensee has committed a breach, the Commission may impose the administrative sanctions in Part III of these Regulations and other sanctions in the Act and other Regulatory Instruments.

ENFORCEMENT PROCESS (cont'd)

- **Enforcement of Licence Conditions** – the procedure for enforcement shall be in accordance with S. 75 of the EPSR Act. May issue penalty after following process if order not complied with – not exceeding N10,000 per day.
- **Enforcement of Market Rules** – the Commission shall refer the matter to the Market Surveillance Panel (MSP) established under the Market Rules for investigation and the Commission shall consider the report of the MSP along with the response of the Market Participant in taking its decisions.
- **Enforcement of Licensing and Permit Requirements** - to be treated in accordance with Regulation 6 of the Enforcement Regulations. The Commission may make orders to prevent the continuation or reoccurrence of the contravention of the Act or such other Regulatory Instrument.

ENFORCEMENT PROCESS (cont'd)

- **Manifest and Flagrant Breaches** – without recourse to Regulations 6 and 7 of the Enforcement Regulations issue a notice to the Licensee to show cause in writing within a period of not less than 3 working days why any administrative sanction should not be imposed for such breach. Where a Licensee fails to respond or the response is unsatisfactory, the Commission may proceed to impose administrative sanctions.
- **Interim Orders** – made in urgent circumstances pending the conclusion of an enforcement process.
- **Directions for Compliance** – issued where a person or a Licensee is required to take specific actions to ensure non contravention of the Act or any Regulatory Instrument.

ENFORCEMENT PROCESS (cont'd)

- **Compliance with Decisions and Orders of the Commission** – failure to comply with the any decision or order of the Commission is liable to pay administrative fine or such other sanction as the determined by the Commission. The Commission may institute civil proceedings in Court against any person for the purpose of enforcing compliance with its decisions, orders and directions including recovery of administrative fines. Non compliance by any Licensee is an offence and is punishable under S. 94 of the EPSR Act.
- **Review of the Commission's Decisions** – this is in accordance with S. 50 of the Act and clause 22 of the NERC Business Rules where the Commission is vested with jurisdiction to its decisions.

ADMINISTRATIVE SANCTIONS

These includes:

1. **Administrative Fines** – not exceeding N10,000 per minute for each breach payable within 14 days from the date of the decision.
2. **Suspension of Licence** – for a term to be determined by the Commission. Section 16 of the NERC Regulation on Application for Licences
3. **Changes in Boards and management of Licensees** – by an order of the Commission which must be complied with within 10 days. Failure to comply constitutes a breach for which administrative sanctions may be imposed without recourse to Regulations 6 & 7 of the Enforcement Regulations.
4. **Cancellation of licence** – in accordance with S. 74 of the EPSR Act 2005 and Section 17 of the NERC Regulation on Application for Licences
5. **Withdrawal of Licence** – Section 18 of the NERC Regulation on Application for Licences

MISCELLANEOUS PROVISIONS

- **Assistance by Law Enforcement Agencies** – to enforce compliance with any decision, order or direction of the Commission.
- **Sealing off premises and seizure of equipment** – after obtaining a warrant from a Magistrate or a Judge of a competent jurisdiction. The Owner or his agent must be provided with a written inventory of the seized property if the property is in the commission's custody.

MISCELLANEOUS PROVISIONS (cont'd)

- **Information gathering** – the Commission or its representative may by a written notice direct a Licensee to give it information physically or electronically where necessary.
- **Obstruction and impersonation of monitoring and enforcement operatives** – both punishable under S. 94 of the EPSR Act.
- **Amendments and Repeal** – The Commission may amend or repeal the provisions of these Regulations.

SCHEDULES

1. First Schedule

- Form EF1 – Complaint Form
- Form EF2 – Acknowledgement of Complaint Form

2. Second Schedule

- Specific Administrative Fines Guide – this table makes provision for fines to be imposed upon violation of specific regulatory instruments.

The Challenges

- Organisational challenges – NERC Structure. Interdivisional involvement should be streamlined
- Approach to enforcement – suspension of licence and changes in Board and Management. Where there is a way, there should be a will.
- The state of the electricity market and Institutional conflicts



THANK YOU

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